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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

HUMBERTO GARZA, III,

Plaintiff and Appellant,

v.

WILLIAM B. KOLENDER, as Sheriff, etc.,

Defendant and Respondent,

BRENTWOOD MHP INVESTORS, LLC,

Real Party in Interest and Respondent.

D052291

(Super. Ct. No. 37-2007-78831-
CU-WM-SC)

APPEAL from a judgment of the Superior Court of San Diego County, William S. Cannon, Judge. Dismissed.

Appellant Humberto Garza appeals from a judgment denying a petition for peremptory writ of mandate in which he sought to prohibit enforcement of a writ of possession and also stay an impending lien sale of his residence by real party in interest Brentwood MHP Investors, LLC (Brentwood). Brentwood had filed an unlawful detainer

action and obtained a default judgment and writ of possession against Garza in October 2007, and on November 7, 2007, the San Diego County Sheriff (Kolender or the sheriff) evicted Garza, even though the sheriff's notice to vacate advised Garza his eviction would take place on "November 7, 2008," if he did not surrender possession before that date. In part, Garza's petition sought to prevent the sheriff from enforcing the writ of possession until Garza was properly noticed under Code of Civil Procedure section 715.010. The superior court denied Garza's petition on grounds he should have sought his requested relief in the unlawful detainer action.

On appeal, Garza argues mandamus was his sole remedy because the unlawful detainer court lost jurisdiction over the writ of possession once the writ was executed and returned. He also argues the sheriff is bound by the notice to vacate, and the premature execution of the writ of possession, as well as his eviction under threat of arrest for trespass, is unlawful and a violation of his due process rights. Finally, Garza contends that because possession of his mobilehome space was prematurely returned to Brentwood, Brentwood had not perfected its right to conduct a lien sale under Civil Code section 798.56a. Brentwood contends the issues raised by Garza's appeal are moot. We agree with Brentwood and dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2007, Brentwood filed an unlawful detainer complaint against Garza in the South Bay Division of the San Diego Superior Court seeking to terminate Garza's tenancy under the Mobilehome Residency Law. Garza failed to answer and Brentwood sought and obtained a default judgment, which was entered on October 25, 2007. That

same day, the clerk issued a Judicial Council form writ of execution for possession directing the sheriff to enforce the judgment of possession. The reverse side of the Judicial Council form states in part: "If the premises are not vacated in five days after service on the occupant . . . the levying officer will remove the occupants. . . ." ¹ Thereafter, Garza received a notice to vacate issued by the sheriff stating he was to turn over possession of the property on or before "November 7, 2008." ²

On November 7, 2007, a deputy sheriff locked Garza out of the mobilehome and forcibly removed an occupant. That day, Brentwood served a lien notice under the Mobilehome Residency Law (Civ. Code, § 798.56a) demanding payment of \$4,259.64 and advising Garza that unless the lien was satisfied, the mobilehome would be sold on November 26, 2007.

On November 20, 2007, Garza filed a petition for peremptory writ of mandate asking the court to enforce the writ of possession exactly as it was written – so that he

¹ We grant Brentwood's request for judicial notice of the language appearing on the reverse side of the Judicial Council form, which Garza concedes sets forth a five-day period in which to vacate the premises. (Evid. Code, §§ 452, 459.) Given our disposition of this matter, we need not address Brentwood's additional requests.

² The form, entitled Notice to Vacate, includes a box in which the "Eviction day, date and time" are set forth in larger, bold font. The notice provides in part: "Final notice is hereby given that possession of the property must be turned over to the landlord on or before: [¶] **Eviction day, date and time: Friday, November 07, 2008, at 6:01 AM** [¶] Should you fail to vacate the premises within the allotted time, I will immediately enforce the writ by removing you from the premises. All personal property upon the premises at that time will be turned over to the landlord, who must return said personal property to you upon your payment of the reasonable cost incurred by the landlord in storing the property from the date of eviction to the date of payment."

could not be dispossessed of the premises until November 7, 2008 – and to void Kolender's premature execution of the writ. Garza also asked the court to stay the lien sale to preserve his right to challenge proceedings in the unlawful detainer action. Specifically, Garza argued Kolender's premature execution and return of the writ of possession deprived the unlawful detainer court of jurisdiction and denied him any means to challenge that court's actions. Garza asked the court to issue a 30-day stay so as to make it possible for him to move to stay execution of the writ of possession and move to vacate the default and default judgment in the unlawful detainer action. Brentwood opposed the petition on grounds Garza inexcusably delayed in seeking relief, his petition was premised on false statements, the unlawful detainer court retained jurisdiction over the matter and that court was the proper court in which Garza should have sought his remedies, there was no remaining portion of the judgment to enforce and Garza was unlikely to prevail on the merits of the petition, and Garza had no grounds to seek vacate the default or default judgment in the unlawful detainer proceeding under Code of Civil Procedure section 473. Brentwood pointed out that the judgment for possession had been executed and returned, Garza had since been permitted to remove his personal property, and the lien sale had already taken place on November 26, 2007. Brentwood also argued it would be substantially prejudiced by the requested relief unless Garza could establish his ability to pay delinquent rental charges and other expenses it incurred in connection with its lien.

The superior court heard Garza's petition on November 28, 2007. Brentwood's counsel argued the issues concerning the writ's execution were moot and Garza could not

obtain the relief requested in any event because he had no available grounds to set aside or vacate his default or the default judgment. Garza's counsel responded that the sole issue was whether the sheriff was bound by its notice to vacate providing Garza would not be evicted until November 2008. Counsel asked the court to rule that Garza could return to his home without threat of arrest for trespass until the sheriff served a proper notice or until November 7, 2008. The court denied the petition, ruling that the unlawful detainer court retained jurisdiction over the matters raised by Garza. It declined to nullify the writ of possession. Garza appeals.

DISCUSSION

Brentwood asserts we should dismiss Garza's appeal as moot. It maintains this court cannot grant Garza's request for a 30-day stay of the lien sale of his mobilehome because the sale has already taken place, nor can we prohibit Kolender from enforcing the writ of possession because that enforcement had been completed when the sheriff locked Garza out of the premises on November 7, 2007, and returned the writ to the unlawful detainer court. Brentwood further argues that new events – the passage of the statutory deadlines for Garza to set aside the unlawful detainer default and default judgment – also render it impossible to grant Garza relief.

Garza concedes that any relief with respect to the lien sale is moot. However, he argues this court can still hold he was not lawfully evicted by Kolender and cannot be arrested for trespass under the writ of possession, a result that is distinct from an order restoring him to possession. He additionally argues the appeal is not moot even if he can no longer seek to vacate the unlawful detainer judgment because Code of Civil Procedure

section 473 is not the exclusive means of obtaining relief from default. He further maintains this case presents an important recurring question of law impacting jurisdictions that use sheriff's notices to vacate, namely, whether a writ of possession may be "amplified" by such notice.

An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541; *In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.) "[T]he duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal." (*Consol. etc. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863.)

"Notwithstanding [the mootness doctrine], there are three discretionary exceptions to the rules regarding mootness: (1) when the case presents an issue of broad public interest that is likely to recur [citation]; (2) when there may be a recurrence of the controversy between the parties [citation]; and (3) when a material question remains for the court's determination." (*Cucamongans United for Reasonable Expansion v. City of*

Rancho Cucamonga (2000) 82 Cal.App.4th 473, 479-480; see also *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 746-747.) In such cases, a reviewing court may exercise its inherent discretion to resolve an issue rendered moot. (*Balayut v. Superior Court* (1996) 12 Cal.4th 826, 829, fn. 4.)

We are unable to grant Garza effective relief. Garza acknowledges that the eviction date set forth in the sheriff's notice to vacate was November 7, 2008, a date that passed before his matter was orally argued in this court. Garza explains that his purpose in seeking a petition for writ of mandate was to ensure the sheriff's notice to vacate was "carried out according to its terms and the law" and he asks us to rule only that he cannot be arrested for trespass under the writ until arrival of the date set out in the sheriff's notice. Because for purposes of this appeal Garza concedes the notice to vacate permitted the sheriff to dispossess him from his mobilehome on November 7, 2008, he necessarily admits there is no basis to issue an order that would restore his ability to remain in the residence without threat of trespass or arrest.

We do not agree with Garza that his appeal presents an issue of broad public interest that is likely to recur. Garza's matter is dependent on its unique procedural facts and in our view, is unlikely to provide guidance for future unlawful detainer disputes. (Accord, *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214-215.) We decline to resolve the moot questions presented here, or render a theoretical opinion about the result in cases in which a levying officer's notice to vacate premises differs from a writ of possession containing the statutory five-day notice

of Code of Civil Procedure section 715.010, subdivision (b)(2). The factual issues presented require resolution on a case-by-case basis.

DISPOSITION

The appeal is dismissed.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

NARES, J.